

9-6-2016

State v. Rusokoff Appellant's Brief Dckt. 44166

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44166
)	
v.)	ADA COUNTY NO. CR 2015-12282
)	
MELISSA C. RUSOKOFF,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

After she pled guilty to felony possession of a controlled substance, the district court sentenced Melissa C. Rusokoff to a unified term of five years, with two years fixed, and then suspended the sentence and placed Ms. Rusokoff on probation for a period of five years. Ms. Rusokoff contends the district court abused its discretion when it imposed the underlying sentence in light of the mitigating factors that exist in this case.

Statement of the Facts and Course of Proceedings

On August 25, 2015, a police officer observed a white Buick with California license plates traveling 77 miles per hour in a 65 mile per hour zone. (Presentence

Investigation Report (“PSI”), p.97.) The officer stopped the Buick, and identified Ms. Rusokoff as the driver and sole occupant. (PSI, p.97.) Ms. Rusokoff disclosed she had marijuana in the vehicle and, following a search of the vehicle, was arrested for driving without privileges and possession of methamphetamine, marijuana and drug paraphernalia. (PSI, p.3.) It was later determined that the Buick had been reported stolen from Budget Rental Cars. (PSI, p.3.)

Ms. Rusokoff was charged by Information with felony possession of a controlled substance, grand theft, misdemeanor possession of a controlled substance, possession of drug paraphernalia and driving without privileges. (R., pp.32-34.) Ms. Rusokoff entered into an agreement with the State, pursuant to which she agreed to plead guilty to felony possession of a controlled substance. (2/23/16 Tr., p.8, Ls.8-17.) In exchange, the State agreed to dismiss the remaining counts and recommend a sentence of six years, with six months fixed, and agreed not to pursue a persistent violator enhancement. (R., pp.60, 61-68.) The district court accepted Ms. Rusokoff’s guilty plea. (2/23/16 Tr., p.22, Ls.19-23.)

At sentencing, the State recommended a unified sentence of five years, with six months fixed. (4/16/16 Tr., p.10, Ls.11-16.) Counsel for Ms. Rusokoff recommended a unified sentence of four years, with six months fixed. (4/16/16 Tr., p.14, Ls.10-14.) The district court sentenced Ms. Rusokoff to a unified term of five years, with two years fixed, and suspended the sentence and placed Ms. Rusokoff on probation for a period of five years. (R., p.69.) The district court also sentenced Ms. Rusokoff to 365 days in Ada County Jail, with credit for 238 days served, with the understanding that she could be immediately released upon arranging a transfer of supervision to California. (4/16/16

Tr., p.18, Ls.11-20.) The judgment of conviction was entered on April 21, 2016.¹ (R., pp.72-78.) Ms. Rusokoff filed a timely notice of appeal on May 6, 2016. (R., pp.84-87.)

ISSUE

Did the district court abuse its discretion when it imposed upon Ms. Rusokoff an underlying unified term of five years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Ms. Rusokoff An Underlying Unified Term Of Five Years, With Two Years Fixed

Ms. Rusokoff asserts that, given any view of the facts, her suspended sentence of five years, with two years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having

¹ The district court entered an amended judgment of conviction on May 12, 2016, correcting a clerical error. (R., pp.110-16.)

regard to the nature of the offense, the character of the offender and the protection of the public interest.” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The underlying sentence imposed by the district court upon Ms. Rusokoff was not reasonable given the nature of Ms. Rusokoff’s offense, her character, and the protection of the public interest. Ms. Rusokoff pled guilty to possession of a controlled substance—methamphetamine—which was discovered in her car during a traffic stop. (PSI, pp.3, 97.) Possessing a controlled substance is a serious crime, but not one that warrants an underlying sentence of five years, with two years fixed. Both the prosecutor and counsel for Ms. Rusokoff recommended an underlying sentence of six months fixed, and this would have been far more appropriate. (4/16/16 Tr., p.10, Ls.11-16; p.14, Ls.10-14.)

Ms. Rusokoff is a resident of California, not Idaho, and the instant offense was her first felony conviction in Idaho. (PSI, pp.23, 24.) Ms. Rusokoff is a college graduate, who was self-employed as a massage therapist in California prior to her arrest. (PSI, pp.13, 14.) She is the mother of a nine-year-old boy who is currently residing with his paternal grandparents in California, and she is actively working with Child Protective Services to restore all of her parental rights. (PSI, p.13.)

Ms. Rusokoff submitted a letter to the district court prior to sentencing, in which she apologized for her conduct and recognized she needed “to make better choices in order to secure a good future.” (PSI, p.54) She stated she made “some really stupid choices” but “that’s not the woman I am today—I’m a hard working smart funny loving [and] caring [and] honest person.” (PSI, p.54.) She explained she was “a mother first” and “just got lost.” (PSI, p.54.) She stated the loss of her son “is like ripping my heart

out of my chest” and asked the district court to “please let me go home to my son.” (PSI, pp.54-55.) In light of the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it imposed upon Ms. Rusokoff an underlying unified sentence of five years, with two years fixed.

CONCLUSION

Ms. Rusokoff respectfully requests that this Court reduce her underlying sentence as it deems appropriate.

DATED this 6th day of September, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MELISSA C RUSOKOFF
53740 AVENITA RAMIREZ
LA QUINTA CA 92253

RICHARD D GREENWOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas